

## Legal Practitioners' Liability Committee

### Risk Management Checklist for Equity Release Products



- ❖ Identify the type of equity release product involved – is it a reverse mortgage; a home reversion scheme; or a shared appreciation mortgage?
- ❖ Do not act if you are not completely independent of the lender.
- ❖ Recommend strongly that the client obtain independent financial and tax advice. Scope your retainer to exclude the giving of such advice unless you are qualified to provide it.
- ❖ Take instructions from the client as to the purpose of the loan and the client's circumstances, for broadly assessing the providence of the transaction, particularly having regard to the client's foreseeable needs later in life. Remember that the client or another family member on behalf of the client might seek to second-guess your professional advice and judgment many years down the track if the client's financial circumstances deteriorate.
- ❖ Explain to the client that equity release products are more expensive forms of finance than traditional mortgage lending, and that they should consider any other options first.
- ❖ Thoroughly read the documents to understand and then advise the client on the nature and effect of the transaction. Particular issues to canvass include:
  - What happens to the title?
  - What security does the client have to remain in the home? Can other dealings impair the client's tenure? Should a caveat be lodged on title to protect the client against any subsequent dealings?
  - When is the loan repayable?
  - Advise and warn the client of the events of default – these being the circumstances in which the lender can exercise its power of sale and forcibly evict the client from the property.
  - Ensure that a reverse mortgage contains a 'no negative equity' guarantee.
  - Look for any other unusual features of the transaction having regard to the client's circumstances - the amount of the loan; the interest rate (and impact of rises in interest rates that may occur over the life of the loan); the upfront fees and ongoing costs.
- ❖ Advise the client to consult Centrelink about the impact of the transaction on any benefits paid to the client before proceeding.
- ❖ Document your advice, and record the client's response(s) to your advice. Confirm advice to the client in writing.
- ❖ Discuss involving family members with the client, and document the client's instructions and your advice, particularly if the client does not wish to inform family members.
- ❖ If required to provide a certificate of independent advice, use the LIV form of certificate.
- ❖ Charge an appropriate professional fee for your advice.
- ❖ Keep your file – you may need to call upon it later.